

Exhibit 2

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 10-13164

4 Adv. Case No. 10-03496

5 - - - - - x

6 In the Matter of:

7

8 FAIRFIELD SENTRY LIMITED AND NOMURA INTERNATIONAL PLC,

9

10 Debtors.

11 - - - - - x

12 FAIRFIELD SENTRY LIMITED (IN LIQUIDATION) et al.,

13 Plaintiffs,

14 v.

15 THEODOOR GGC AMSTERDAM et al.,

16 Defendants.

17 - - - - - x

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1 United States Bankruptcy Court
2 One Bowling Green
3 New York, NY 10004
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5 April 21, 2021
6 10:00 AM
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21 B E F O R E :

22 HON CECELIA G. MORRIS

23 U.S. BANKRUPTCY JUDGE
24

25 ECRO: UNKNOWN

1 HEARING re Motion to Dismiss Reply Brief filed on June 19,
2 2020 Doc #3091 Notice of Adjournment of Hearing RE: Notice
3 of Hearing for Status Conference; hearing held and adjourned
4 to 4/21/2021 at 10:00 AM at Teleconference Line
5 (CourtSolutions) (CGM).

6
7 HEARING re Adversary proceeding: 10-03496-cgm Fairfield
8 Sentry Limited (In Liquidation) et al v. Theodoor GGC
9 Amsterdam et al Doc# 3521 Letter to Hon. Cecelia G. Morris
10 from the Parties re: Third Motion to Dismiss Briefing. Filed
11 by David Elsberg on behalf of Fairfield Lambda Limited (In
12 Liquidation), Fairfield Sentry Limited (In Liquidation),
13 Fairfield Sigma Limited (In Liquidation), Kenneth Krys,
14 solely in his capacity as Foreign Representative and
15 Liquidator thereof.

16
17 HEARING re Doc# 3522 Letter to Hon. Cecelia G. Morris from
18 the Parties in the Citco Entity Action re: Third Motion to
19 Dismiss Briefing in that Action. Filed by David Elsberg on
20 behalf of Fairfield Lambda Limited (In Liquidation),
21 Fairfield Sentry Limited (In Liquidation), Fairfield Sigma
22 Limited (In Liquidation), Kenneth Krys, solely in his
23 capacity as Foreign Representative and Liquidator thereof.

1 Hearing RE Doc# 964 Notice of Adjournment of Hearing RE:
2 Notice of Hearing for Status Conference; hearing held and
3 adjourned to 4/21/2021 at 10:00 AM at Teleconference Line
4 (CourtSolutions) (CGM) .

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25 Transcribed by: Sonya Ledanski Hyde

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24 LISA VICENS

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1 **MICHAEL LAMBERT**

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1 P R O C E E D I N G S

2 THE COURT: Now then we are at the Fairfield
3 Sentry cases and we have a jointly administered 10-13164,
4 the Fairfield Sentry Limited liquidation and the title in
5 the jointly administered is Theodoor GGC Amsterdam et al.
6 Is that correct and have I called that correct? And I have
7 a chapter -- oh, that is the Chapter 15 case number.

8 This is adversary proceeding, I'm sorry. 10-03496
9 which is the adversary proceeding number. Thank you. State
10 your name and affiliation.

11 MR. ELSBERG: This is David Elsberg for the joint
12 liquidators, Judge Morris. I'm from Selendy and Gay and my
13 clients, Mr. Ken Chris and Greg Mitchell, the two joint
14 liquidators that a represent are on the phone with me. Also
15 on the phone with me, Judge Morris, are my colleagues Lena
16 Konanova, Ron Krock, and Ester Murdukhayeva, all from
17 Selendy and Gay, and co-counsel David Molton and Marek
18 Kryzowski from Brown Rudnick.

19 MR. MOLTON: Good morning, Judge. David Molton
20 here.

21 MAN 1: Morning.

22 MR. BAMBERGER: Good morning, Your Honor. This is
23 Nowell Bamberger at Cleary Gottlieb representing the HSBC
24 defendants. I'm joined by Christine Jordan and April
25 Collaku also from Cleary Gottlieb.

1 THE COURT: Anyone else wish to put their name on
2 the record? I want us to start with plaintiffs. Where are
3 we in this case? I've got y'all's joint letter, but where
4 are we?

5 MR. ELSBERG: So Your Honor, as we discussed in
6 the last conference, the third motion to dismiss involves 18
7 live actions before --

8 THE COURT: Why don't we begin at the beginning
9 and that's called the complaint. Where are we on the
10 amended complaint? And then you can go through everything
11 else, but let's just start -- if you think about a case,
12 start where the case starts.

13 MR. ELSBERG: Yes, Your Honor. So we have
14 complaints that are pending before Your Honor in these 18
15 actions.

16 THE COURT: Okay.

17 MR. ELSBERG: We have filed a motion to amend with
18 respect to some but not all of those complaints.

19 THE COURT: Okay, then we're going to stop right
20 there.

21 MR. ELSBERG: Yes.

22 THE COURT: And I am going to put on the record
23 today and you're going to tell me which ones. I have
24 Fairfield Sentry, Ltd. v. Citibank, 10-03622 and I have the
25 operative amended complaint as January the 10th, 2020 at

1 Document 79. Is that correct?

2 MR. ELSBERG: Yes, Your Honor.

3 THE COURT: So -- and now is there another amended
4 complaint on this one or request for an amended complaint?

5 MR. ELSBERG: Yes, Your Honor. We are seeking to
6 amend a number of the --

7 THE COURT: We'll go through one at a time.
8 Remember, I'm a new judge.

9 MR. ELSBERG: Yes, Your Honor.

10 THE COURT: You're going to teach me this case.
11 Everybody on the phone today, you're teaching me the case.
12 Am I clear?

13 MR. ELSBERG: Yes.

14 THE COURT: The second one is Fairfield Sentry v.
15 BGL BNP Paribas SA, 10-03626. It's -- and it was amended.
16 Complaint was amended January the 10th, 2020 at Document No.
17 50.

18 MR. ELSBERG: Yes, Your Honor.

19 THE COURT: Tell me about this one, about the
20 complaint. Am I getting an amended -- do you want amended
21 complaint in this one?

22 MR. ELSBERG: Yes, Your Honor.

23 THE COURT: Then I have Fairfield Sentry v. BNP
24 Paribas Sec. Services Lux., 10-03627, again January the
25 10th, 2020, Document 95.

1 MR. ELSBERG: Yes, Your Honor.

2 THE COURT: And?

3 MR. ELSBERG: I'm sorry, Your Honor?

4 THE COURT: Do you want an amended complaint in
5 this one?

6 MR. ELSBERG: I'm sorry --

7 THE COURT: Are you requesting --

8 MR. ELSBERG: Yes. Yes, that's what I thought you
9 were asking.

10 THE COURT: No, I'm -- the first yes I want is the
11 amended complaint that was docketed January the 10th, 2020
12 is the outstanding complaint in this case?

13 MR. ELSBERG: Yes, Your Honor.

14 THE COURT: And then the second one is, are you
15 requesting another amended complaint and the answer was?

16 MR. ELSBERG: Yes.

17 THE COURT: Very good. Fairfield Sentry, HSBC,
18 10-03630. It was amended on January the 9th, 2020 at
19 Document No. 105. Is that the prevailing complaint in this
20 case?

21 MR. ELSBERG: Yes, Your Honor.

22 THE COURT: Are you requesting an amendment in
23 this one?

24 MR. ELSBERG: Yes, Your Honor.

25 THE COURT: Fairfield v. HSBC Private Bank, 10-

1 03633. It was amended January the 9th, 2020 at Document No.
2 86. Is that the complaint we're all working with?

3 MR. ELSBERG: Yes, Your Honor.

4 THE COURT: Are you requesting amended complaint
5 on that one?

6 MR. ELSBERG: Yes, Your Honor.

7 THE COURT: Fairfield Sentry v. Zurich Capital
8 Markets, 10-03634 amended January the 9th, 2020 at Document
9 No. 237. Are you requesting an amended complaint on that
10 one?

11 MR. ELSBERG: Yes, Your Honor.

12 THE COURT: Fairfield v. ABN AMRO Schweiz AG, 10-
13 03635 amended January the 9th 2020 at Document No. 466. Are
14 you requesting an amended complaint on that?

15 MR. ELSBERG: Yes, Your Honor.

16 THE COURT: Fairfield Sentry v. ABN AMRO Schweiz
17 AG at 03636, January the 9th, 2020 at Document No. 517. Is
18 that the complaint?

19 MR. ELSBERG: Yes, Your Honor, it is.

20 THE COURT: Are you requesting an amended
21 complaint?

22 MR. ELSBERG: Yes.

23 THE COURT: Fairfield Sentry v. UBS AG NY, 10-
24 03790, the outstanding complaint is January the 9th, 2020 at
25 Document 87.

1 MR. ELSBERG: Yes, Your Honor.

2 THE COURT: Are you requesting an amended
3 complaint?

4 MR. ELSBERG: Yes, Your Honor.

5 THE COURT: Fairfield Sentry BNP Paribas Arbitrage
6 SNC at 10-04098. The filed complaint is 10 -- is 1/10/2020
7 at Document No. 46. Is that correct?

8 MR. ELSBERG: Yes, Your Honor.

9 THE COURT: Are you requesting an amended
10 complaint?

11 MR. ELSBERG: Yes, Your Honor.

12 THE COURT: Fairfield v. BNP Paribas Private Bank
13 and Trust Cayman, 10-04099. The amended complaint was
14 January the 10th, 2020 at Document No. 66. Are you
15 requesting an amended complaint?

16 MR. ELSBERG: Yes, Your Honor.

17 THE COURT: Fairfield Sentry v. UBS Europe SE
18 Luxembourg Branch, UBS Lux at 11-01350 amended complaint
19 January the 10th, 2020 at Document No. 69.

20 MR. ELSBERG: Yes, Your Honor.

21 THE COURT: Are you requesting an amended
22 complaint?

23 MR. ELSBERG: Yes, Your Honor.

24 THE COURT: Fairfield Sentry v. Merrill Lynch at
25 11-01463, amended complaint January 10th, 2020 at Document

1 54. Is that correct?

2 MR. ELSBERG: Yes, Your Honor.

3 THE COURT: Are you requesting an amended
4 complaint?

5 MR. ELSBERG: Yes, Your Honor.

6 THE COURT: Fairfield v. BNP Paribas Secs. Nominee
7 Ltd., 11-01579. Is that -- January the 10th, 2020, Document
8 No. 44. That was the wrong one. Document No. 50 on BNP
9 Paribas Nominee, Ltd., January 10th, 2020, Document No. 50.

10 MR. ELSBERG: Yes, Your Honor, doc --

11 THE COURT: Are you --

12 MR. ELSBERG: -- 50, yes, and we are seeking to
13 amend, Your Honor.

14 THE COURT: Fairfield Sentry v. Fortis Bank SA/NV
15 11-01617, again January the 10th, 2020, Document No. 44. Is
16 that correct?

17 MR. ELSBERG: Yes, Your Honor.

18 THE COURT: Are you seeking an amended complaint?

19 MR. ELSBERG: Yes.

20 THE COURT: Fairfield Sentry v. Citigroup Global
21 Markets, Ltd., 11-02770. The amended complaint is January
22 the 10th, 2020 at Document No. 49. Is that correct?

23 MR. ELSBERG: Yes, Your Honor.

24 THE COURT: Are you seeking an amended complaint?

25 MR. ELSBERG: Yes, Your Honor.

1 THE COURT: Fairfield Sentry v. BNP Paribas
2 Espana, 10-01551 and the amended complaint was January the
3 10th, 2020 at Document 43. Is that correct?

4 MR. ELSBERG: Yes, Your Honor.

5 THE COURT: Are you asking for an amended
6 complaint in that?

7 MR. ELSBERG: Yes, Your Honor.

8 THE COURT: Fairfield Sentry v. Citco Global
9 Custody NV at 19-01122. Amended complaint was 11/26/2019 at
10 Document No. 19.

11 MR. ELSBERG: No, your -- yes, Your Honor, that is
12 the complaint. No, we --

13 THE COURT: And you're not seeking amended
14 complaint on that one?

15 MR. ELSBERG: Correct, Your Honor.

16 THE COURT: So I've got some, 17 of the 18?

17 MR. ELSBERG: Correct.

18 THE COURT: Some for you is 17 of the 18. Okay.
19 Now then we know you're seeking an amended complaint on
20 everything except one.

21 MR. ELSBERG: Yes, Your Honor.

22 THE COURT: All right. So again, we're at the
23 beginning. I'm trying to learn this case. I have Judge
24 Bernstein's order, stipulation and order, and in it, if I
25 read it correctly, did he not grant amended complaints on

1 the matters that he did not rule on?

2 MR. ELSBERG: No, he did not grant the amendments
3 that we are currently seeking. He did not, Your Honor.
4 What -- the situation is that we have filed a motion to
5 amend those complaints and we filed an opening brief.
6 That's Docket 2873.

7 We filed the -- our opening brief on the motion
8 for leave to amend on January 15, 2020, and again, that's
9 Docket 283 -- 2873, and Your Honor, no opposition or reply
10 brief had been filed yet and the reason for that is that
11 Judge Bernstein had the parties defer the briefing on the
12 motion for leave to amend until after the Safe Harbor and
13 service issues were resolved.

14 Now that the Safe Harbor issues have been --

15 THE COURT: Hold on, hold on.

16 MR. ELSBERG: Yes --

17 THE COURT: -- ahead of yourself. So the 2016
18 motion to amend is over. We're done with that.

19 MR. ELSBERG: Yes, Your Honor.

20 THE COURT: Okay. Go ahead.

21 MR. ELSBERG: So now, the situation is that in 17
22 of the 18 actions, the joint liquidators filed a motion for
23 leave to amend that's been pending for over a year since
24 January 15 of 2020. That's the date when we filed our
25 opening brief which is Docket 2873. There's only the

1 opening brief that's been filed. There has been no
2 opposition or reply that's been filed yet.

3 The reason, Your Honor, that it has not --

4 THE COURT: But he denied part of that partially,
5 did he not? Wait a minute. You're a little ahead of me.

6 MR. ELSBERG: Okay, Your Honor.

7 THE COURT: I was going to say, you're ahead of
8 yourself. I have the February the 26th, 2021 stipulated
9 order by Judge Bernstein.

10 MR. ELSBERG: Yes, Your Honor. I understand what
11 you're talking about now. He did resolve the motion for
12 leave as to 12 of the actions, but not the 17 that are
13 currently pending.

14 THE COURT: So those are completely different than
15 these?

16 MR. ELSBERG: Yes. That's correct, Your Honor.

17 THE COURT: Tell me what groups these together so
18 that I know again. Refresh my recollection on those.

19 MR. ELSBERG: So these are grouped together
20 because they are the knowledge defendants, and what I mean
21 by that, we touched on this a little bit at the last
22 conference, Your Honor. I see you're nodding your head. I
23 can --

24 THE COURT: Yeah. I know the difference, because
25 you did touch on that. I have to tell y'all, I can tell you

1 every one straight up, I'm just trying to find the
2 complaints and I'm not joking about that. So, okay. So
3 you're saying that on these -- and I'm looking at Page 4 of
4 his order and am I in the right place -- okay. So he said
5 "the 12 additional actions against defendants who have not
6 before alleged to be knowledge defendants." Are those the
7 ones we're talking about?

8 MR. ELSBERG: Yes. The 12 actions where leave was
9 denied are currently on appeal before Judge --

10 THE COURT: Okay.

11 MR. ELSBERG: -- Broderick.

12 THE COURT: all right.

13 MR. ELSBERG: So we have the remaining ones in
14 front of Your Honor. Those are the knowledge defendants. I
15 doubt you have it in front of you right now, Your Honor, but
16 at your leisure, if it's helpful, we filed a chart before
17 the last conference --

18 THE COURT: May I be very clear with you?

19 MR. ELSBERG: Yes, Your Honor.

20 THE COURT: I don't have leisure and I have spent
21 a lot of time reading all this. So you tell me what you
22 want to tell me and don't tell me to go look at something.

23 MR. ELSBERG: Then --

24 THE COURT: You've all been on this case ten
25 years. I haven't. So talk to me almost as if we're at a

1 cocktail party and you're explaining everything to me.

2 MR. ELSBERG: Yes, Your Honor.

3 THE COURT: Okay.

4 MR. ELSBERG: If it might be helpful --

5 THE COURT: So those 12 are gone. No, those 12
6 are gone --

7 MR. ELSBERG: Yes.

8 THE COURT: I don't have to deal with those.
9 Okay.

10 MR. ELSBERG: Yes.

11 THE COURT: All right, that's fine. All right.

12 MR. ELSBERG: I was just --

13 THE COURT: -- talking.

14 MR. ELSBERG: I was just going to mention, Your
15 Honor, in an attempt to be helpful that we did file a chart
16 before the last conference at Docket 3090-2 which identifies
17 the knowledge defendants and it might be a useful reference
18 tool in the future. Maybe it will not. I'm just --

19 THE COURT: So those 12 are gone. So what do you
20 want to add about what we're doing now?

21 MR. ELSBERG: Okay.

22 THE COURT: These 17. We've got one solid
23 complaint. After ten years, we've got one solid complaint.
24 So tell me what you want to tell me about the 17 that I
25 don't have a complaint that we're all dealing with.

1 MR. ELSBERG: Yes. What we want to do in the
2 motion to amend, Your Honor, is --

3 THE COURT: Did you file an amended complaint with
4 your motion to amend?

5 MR. ELSBERG: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. ELSBERG: We did.

8 THE COURT: All right.

9 MR. ELSBERG: And --

10 THE COURT: Some of it was just a language change,
11 correct?

12 MR. ELSBERG: Yes, Your Honor.

13 THE COURT: Okay.

14 MR. ELSBERG: And the more substantive changes are
15 to add knowledge allegations. So what we want to do is, in
16 light of Judge Bernstein's prior decision where he --

17 THE COURT: February 26 decision?

18 MR. ELSBERG: Yes, Your Honor.

19 THE COURT: Okay. Which is -- I have in my hand.

20 MR. ELSBERG: Yes. So in that decision Judge
21 Bernstein declared that the standard that we would need to
22 meet in order to prevail on our constructive trust claims is
23 to show knowledge, namely that --

24 THE COURT: Okay, let me just stop you for a
25 moment.

1 MR. ELSBERG: Yes, Your Honor.

2 THE COURT: Didn't Judge Bernstein grant you the
3 ability to add this already? Where --

4 MR. ELSBERG: No, Your Honor. He has not -- what
5 he had us do is file that motion to amend that I mentioned
6 earlier.

7 THE COURT: Okay, show me that in this order.
8 Point in this order where he says do that.

9 MR. ELSBERG: Let me see if I can find --

10 THE COURT: Please, please.

11 MR. ELSBERG: Okay, so if Your Honor looks at the
12 February 26, 2021 order --

13 THE COURT: I have it.

14 MR. ELSBERG: That is the implementing order.

15 THE COURT: Show me the page number --

16 MR. ELSBERG: Page 4.

17 THE COURT: -- where he says that.

18 MR. ELSBERG: Page 4, Your Honor.

19 THE COURT: Okay, I'm there. All right. I've got
20 it. Okay.

21 MR. ELSBERG: And it says, "Whereas on January 15,
22 we filed the amended complaints."

23 THE COURT: You're at the very last paragraph on
24 Page 4?

25 MR. ELSBERG: Yes.

1 THE COURT: Okay. "The consolidate plaintiffs
2 certified completion of their filing of amended complaints
3 and simultaneously move for leave to further amend," and
4 that's the 17 and the 12, and then the 12 were dismissed.
5 Okay.

6 MR. ELSBERG: The motion for leave is referenced,
7 I believe on the top of Page 5, Your Honor.

8 THE COURT: I'm on the top of Page 5.

9 MR. ELSBERG: We then proceeded to brief the
10 limited motion to dismiss issues, but we did not get to
11 brief the motion to amend because Judge Bernstein decided to
12 stay that pending the outcome of the motion to dismiss on
13 the service and the constructive trust motions.

14 THE COURT: Okay. Where -- show me where it says
15 that. I know about the 12. They're out. We're not talking
16 about those.

17 MR. ELSBERG: Okay.

18 THE COURT: We're talking about the 18.

19 MR. ELSBERG: Your Honor --

20 THE COURT: It says, the motion for leave. I've
21 got that.

22 MR. ELSBERG: Okay. If Your Honor would look at
23 Page 5.

24 THE COURT: Okay, I'm on Page 5.

25 MR. ELSBERG: Okay. It says, the Court otherwise

1 adjourned deadlines for the motion for leave and held it in
2 abeyance.

3 THE COURT: Okay, I have a big arrow there, and
4 that's for those 18?

5 MR. ELSBERG: Yes, Your Honor.

6 THE COURT: Okay. All right.

7 MR. BAMBERGER: Your Honor, may I address a point
8 relevant to, I think, what you're talking about with Mr.
9 Elsberg?

10 THE COURT: Go ahead.

11 MR. BAMBERGER: Okay. Your Honor, I think what
12 Mr. Elsberg is saying about the amended complaints that are
13 currently pending before Your Honor is correct. The problem
14 is that what he's left out is what came before those amended
15 complaints. Your Honor is correct that the Court granted
16 leave to amend after its December 2018 decision which
17 identified knowledge as something that the --

18 THE COURT: Well, I have the history of that
19 because on January the 15th, 2020, the plaintiffs certified
20 completion of those amended complaints, so that's done.

21 MR. BAMBERGER: That's exactly right.

22 THE COURT: -- deal with that.

23 MR. BAMBERGER: That's right, Your Honor, but it's
24 relevant because that's the leave that was granted to
25 address the knowledge allegations and the liquidators'

1 counsel filed on that same day after -- immediately after
2 certifying that they had completed amendments pursuant to
3 the Court's instruction. They filed another motion to amend
4 again.

5 THE COURT: Okay, I understand now.

6 MR. BAMBERGER: That's the motion that's before
7 you.

8 THE COURT: Okay, I understand that. I understand
9 that. He was clear on that and I'm now clear on that.

10 MR. BAMBERGER: Very good, Your Honor.

11 THE COURT: Okay. All right. So, all right, we
12 started at the complaint, right?

13 MR. ELSBERG: Yes, Your Honor.

14 THE COURT: All right, before we go any further,
15 and let me tell y'all something right now. I want this
16 heard by everybody. You will brief me one issue at a time.
17 I'm not going to have everything thrown at me. You're going
18 to do one issue at the time and right now, we're on the --
19 one issue per brief. And right now, we're on the complaint.

20 So when I say briefing schedule or you say
21 briefing schedule it's going to be one issue per brief and
22 that means you'll consolidate down on those 35 pages, so
23 we'll figure that out later, but I'm going to say it now and
24 I'll say it later.

25 Okay, so now then, let's respond to the amendment

1 on these 18 complaints. Who wants to respond? They've
2 requested it. Who wants to say, don't do it?

3 MR. BAMBERGER: Your Honor, I think on behalf of
4 all the defendants, I think we strongly believe that it
5 shouldn't be granted.

6 THE COURT: Why?

7 MR. BAMBERGER: Well first, it was filed in
8 violation of a scheduling order. You know, there was a
9 schedule put in place in this case. Part of the reason this
10 case is dragging on so long is that the liquidators continue
11 to amend their complaints, and in search of new theories and
12 in search of new allegation. So I think that's one of the
13 reasons it's just procedurally inappropriate.

14 There are other reasons including that the
15 amendments this late are prejudicial to some of the
16 defendants who ten years into the case are just learning
17 about allegations against them and haven't had the
18 opportunity to fully investigate those allegations that they
19 might've had if the allegations had been brought earlier.

20 THE COURT: Response?

21 MR. ELSBERG: Yes, Your Honor. We did not violate
22 any scheduling order. The parties agreed that we would
23 submit our proposed amendments by January 15 of 2020. There
24 was no delay in our part. What happened is, as I began to
25 discuss earlier, in Justice Bernstein's decision, what he

1 did is he declared for the first time that in order for us
2 to prevail on the constructive trust claims, we needed to
3 show the defendants had knowledge and we then, in accordance
4 with our obligation as lawyers, we didn't just copy over
5 from Madoff complaints or other complaints.

6 We did an independent investigation on these
7 complaints to make sure that we had facts that we could
8 allege. We then submitted our proposed amended complaints
9 as I mentioned earlier, and the brief, the opening brief has
10 been pending, and I would also add that on January 22 of
11 2020 -- I'll try to get the docket number, but on January 2
12 of 2020, the defendants already put in a letter brief, a 13-
13 page letter brief giving Justice Bernstein a number of
14 reasons why supposedly we should not be permitted to file
15 our motion to amend.

16 Justice Bernstein got their letter. I see it's
17 Docket 2874. Justice Bernstein got that letter that made
18 exactly the same arguments that we just heard plus a bunch
19 of other arguments saying here's why we should not be able
20 to file our motion to amend. Judge Bernstein said no, I am
21 allowing the plaintiffs to file the motion to amend, and
22 pursuant to that ruling by Judge Bernstein, we did on
23 January 15th, which again is Docket 2873.

24 THE COURT: Okay. Then let's stop right there.

25 MR. ELSBERG: Yes.

1 THE COURT: That's all past.

2 MR. ELSBERG: Yes.

3 THE COURT: Okay. In my mind, when I read this,
4 he had allowed these amendments, but y'all are both saying
5 he did not officially allow those amendments.

6 MR. ELSBERG: Yes, Your Honor.

7 THE COURT: And that the -- there has been a
8 letter brief. And by the way, letters should be rare.
9 Let's just be rare on the letters.

10 MR. ELSBERG: Yes, Your Honor.

11 THE COURT: You file your motions. You file
12 everything and you -- and make sure your orders answer the
13 motion, not a letter because that's not officially in front
14 of me. So what I have in front of me, though, is both of
15 you agree that the pending motion for leave on these 17
16 adversary proceedings has not been granted.

17 MR. ELSBERG: It -- yes, Your Honor, it has not
18 been granted.

19 THE COURT: Very good, then. We're going to do --
20 you can actually repeat your letter brief if you wish
21 because I'm not going to look at the letter brief, but I
22 need a brief on that. You tell me why and you tell me why
23 not.

24 MR. ELSBERG: Your Honor, just to be clear, we the
25 joint liquidators did not file a letter. What happened is

1 the --

2 THE COURT: We're starting today.

3 MR. ELSBERG: Yes.

4 THE COURT: Let's begin today. You both agree
5 that there is not an order allowing for the motion to amend.
6 Correct?

7 MR. ELSBERG: Yes. There is a decision by Judge
8 Bernstein allowing us to make a motion to amend.

9 THE COURT: Very good. So that's where we are.

10 MR. ELSBERG: Yes.

11 THE COURT: That's where we are today.

12 MR. ELSBERG: Yes, Your Honor.

13 THE COURT: We're going to do a motion to amend.
14 We're going to let you brief your motion to amend and we're
15 going to let you answer the motion to amend. That's our
16 first brief, one issue.

17 MR. ELSBERG: Yes, Your Honor.

18 THE COURT: So what kind of timeframe you want?
19 And I -- let me tell y'all. Everything else, I will tell
20 you right now, y'all put this as number five on your common
21 issues. This is number one. I can't do a motion to dismiss
22 if I don't know what we're dismissing. So if we've got an
23 outstanding issue on what the complaint says, we can't move
24 to step two. So let's get -- y'all are cooperating about
25 time, but we're going to -- that's what we're going to do on

1 this. We're going to set up time of when we get the motion
2 to amend and when we get the briefing on it and then when we
3 get the response brief.

4 MR. ELSBERG: Yes, Your Honor. So our brief, as I
5 mentioned, is already before Your Honor.

6 THE COURT: Okay.

7 MR. ELSBERG: And so I think that maybe the
8 defendants --

9 THE COURT: Why don't we -- did you file a motion
10 to amend after Judge Bernstein said you could?

11 MR. ELSBERG: We did, on January 15 of 2020, which
12 is Docket 283 and we filed it on January 15 --

13 THE COURT: That's after this 26 -- so let's file
14 a new motion to amend referring to that motion because we
15 have Fairfield One, Fairfield Two, Fairfield Three. Let's
16 get this cleaned up, everybody, and let's get the procedural
17 part cleaned up.

18 MR. ELSBERG: So Your Honor --

19 THE COURT: He said -- didn't he say in this you
20 could file your motion to amend? He said motion to amend.
21 He didn't say order to amend. He said motion to amend.

22 MR. ELSBERG: Yes, and Your Honor, that motion was
23 in fact filed and is in fact pending and it was filed on
24 January 15 of 2020 and it's Docket 2873.

25 THE COURT: I know it's been filed according to

1 you in that time.

2 MR. ELSBERG: Yes. And we went --

3 THE COURT: That doesn't account for the new
4 decisions in this case, the -- all the other things that
5 have been going on in this case. Okay. All right. Do you
6 want me to rule on it without any further briefing on it?

7 MR. BAMBERGER: Your Honor, I think --

8 THE COURT: Do you not think we need a new brief?

9 MR. ELSBERG: I don't, Your Honor.

10 MR. BAMBERGER: Your Honor, for the defendants, I
11 think we're happy to answer the brief that's been filed, if
12 that suits Your Honor.

13 THE COURT: I thought you did in a letter.

14 MR. ELSBERG: No, Your Honor.

15 MR. BAMBERGER: The letter --

16 THE COURT: That's what he said he did.

17 MR. ELSBERG: No, no, no, Your Honor. Your Honor,
18 sorry. Let me just trying to get the sequence clear. So
19 what happened is before we filed any motion to amend the
20 complaint, before any motion was filed, the defendants wrote
21 a letter to Justice Bernstein, a 13-page letter, and that
22 letter gave a whole bunch of reasons why we should not even
23 be allowed to file a motion for leave to amend. They said,
24 don't even allow us to file it. And Judge Bernstein got the
25 letter.

1 There was then a hearing on it and Judge Bernstein
2 said, defendants, I have your letter. I know you don't want
3 me to allow the joint liquidators to file a motion for leave
4 to amend, but I'm sorry, defendants, I am going to allow the
5 joint liquidators to file a motion for leave to amend. That
6 was all he decided was we can file the motion for leave to
7 amend.

8 THE COURT: And you did?

9 MR. ELSBERG: Yes, Your Honor. We did file that
10 on --

11 THE COURT: And there's been no response to that?

12 MR. ELSBERG: And there has been no response to
13 that and the reason is Judge Bernstein had the parties defer
14 briefing, further briefing, I should say, in the motion for
15 leave to amend until the Safe Harbor and service issues had
16 been resolved. They've now been resolved in Justice
17 Bernstein's most recent decision and so the next step, I
18 think the parties expected would be that the defendants
19 would now file their --

20 THE COURT: Let me ask you something before you go
21 further. Let me just ask you something.

22 MR. ELSBERG: Yes, Your Honor.

23 THE COURT: Did that proposed complaint contain
24 the BVI avoidance actions, in the one that you proposed in
25 January of 2020?

1 MR. ELSBERG: Yes --

2 THE COURT: -- Judge Bernstein --

3 MR. ELSBERG: Yes, it did.

4 THE COURT: So don't we need a cleaned up motion
5 and complaint? Because we've had rulings since 2020.

6 MR. ELSBERG: Yes, Your Honor.

7 THE COURT: I'm sorry to be so thick --

8 MR. ELSBERG: No, Your Honor.

9 THE COURT: -- I'm trying to understand this.

10 MR. ELSBERG: Yes, of course, and I'm trying to
11 help Your Honor. It's a lot of stuff and I understand. We
12 can file new amended complaints that drop the avoidance
13 claims --

14 THE COURT: Well, it's the motion for the amended
15 complaints that I need that show what's gone on between 2020
16 and '21. That's why I thought -- and then you went back to,
17 oh no, that motion's there. And then in the same time, I
18 don't have a response to that motion.

19 MR. ELSBERG: Yes.

20 THE COURT: And so if we started today, I would
21 have to grant the motion as you wrote it and they would be
22 up in arms. I can understand that.

23 MR. ELSBERG: Your Honor, the parties have --
24 obviously, subject to Your Honor's approval -- the parties
25 have agreed --

1 THE COURT: I don't care what y'all have agreed.
2 Y'all haven't agreed in an order that makes it clear in the
3 Court and I am honestly thinking about Court of Appeals,
4 because if I read y'all's documents and what you did and I
5 was a Court of Appeals, the first thing I would do is remand
6 it back to the bankruptcy judge.

7 MR. ELSBERG: Yes, Your Honor. So the motion that
8 we filed to amend --

9 THE COURT: And I also --

10 MR. ELSBERG: Yes, Your Honor.

11 THE COURT: -- don't want to spend time on things
12 that have already been finished in the bankruptcy court and
13 are up on appeal. That belongs to another court. That
14 doesn't belong to me.

15 MR. ELSBERG: Yes, Your Honor. Yes, Your Honor.

16 THE COURT: So there -- the first thing is the
17 complaint. I need to know what we're dealing with.

18 MR. ELSBERG: Okay. Your Honor --

19 THE COURT: I need to know what the issues are. I
20 need to know what they are and I need to know the
21 oppositions of why not to file the amended complaint.

22 MR. ELSBERG: Yes --

23 THE COURT: That's the first thing. We don't even
24 get to a motion to dismiss until I see the complaints.

25 MR. ELSBERG: Yes, Your Honor.

1 THE COURT: The second thing we deal with -- I'm
2 sorry, I'm about to take over and I'll show my ignorance on
3 what I know about the case, but that's it. The second thing
4 we have to deal with is service, because if it hasn't been
5 served properly on a case-by-case basis, then -- and Judge
6 Bernstein in his Fairfield Decision 3, says there needs to
7 be a brief on service about the law firm. I don't want to
8 hear about the Hague Convention. I want to hear about the
9 law firm.

10 And that's the second issue I have. And y'all
11 have got them all flipped around. The first issue is how do
12 we have -- how do I have jurisdiction over this complaint?
13 Until I get a clean complaint, I don't have any. I mean, I
14 don't -- what's going on? And then the second, is it
15 properly served? And Judge Bernstein was clear, the proper
16 thing to brief on this is law firm service. Okay?

17 I'm sorry to jump in, but boy -- okay. All right.
18 Next. I'm sorry to keep interrupting you, but I'm -- if you
19 want to see all the stuff I've read and tried to put
20 together, and what I said about an appellate court, I'm
21 serious. If I were in appellate court looking at this, the
22 first thing I would do is remand it and say, bankruptcy
23 court, you straighten this out. Once you straighten it out,
24 you can come to me.

25 So that's what we're doing. We're going to

1 straighten this out. So, okay. Where are we now?

2 MR. ELSBERG: So Your Honor, we can file a new
3 motion for leave. It sounds like that may work for Your
4 Honor.

5 THE COURT: It most certainly will.

6 MR. ELSBERG: Okay. So we --

7 THE COURT: But let's do a briefing schedule right
8 now.

9 MR. ELSBERG: Yes, Your Honor. We can file our
10 motion for leave to amend --

11 THE COURT: Twenty-one days?

12 MR. ELSBERG: Yes, that -- yes.

13 THE COURT: Okay, and I want you to take into
14 consideration and make sure you refer back to all of Judge
15 Bernstein -- not all of Judge Bernstein's rulings, but you
16 know what's in it and what's not. Twenty-one days after
17 that, answer?

18 MR. BAMBERGER: Your Honor, we request 30 days
19 because --

20 THE COURT: Why?

21 MR. BAMBERGER: Okay. Can I --

22 THE COURT: There's no holidays in between.

23 MR. BAMBERGER: Yeah, there just -- there are a
24 lot of defendants which we're trying to coordinate, so Your
25 Honor, can I ask just a clarifying question on what we're

1 going to be briefing on the motion for leave to amend? I
2 think it would be efficient for us to address the procedural
3 aspects of the motion for leave to amend and not collapse
4 utility arguments.

5 THE COURT: I want the utility arguments. It's
6 been pending forever. Y'all should know what's going on in
7 your case and you're going to be in the hot seat next,
8 because it's like -- it's there. Y'all been dealing with it
9 for ten years. I'm the youngest one in the group on this
10 one.

11 MR. BAMBERGER: Understood, Your Honor. I already
12 feel like I'm in the hot seat.

13 THE COURT: And we're not going to -- and we're
14 not going to split up all the -- we're not going to bring
15 all these issues together and collapse them. We're
16 separating them so that I can deal on a case-by-case -- not
17 on a case-by-case basis, but a matter-by-matter basis.
18 We're -- I'm picking the issues. You're not.

19 MR. BAMBERGER: I understand, Your Honor. The
20 only reason I raised that point is the question of, for
21 example, is a claim pled on the face of the complaint, is
22 there -- is jurisdiction addressed properly, all of those
23 issues that I assume Your Honor is envisioning as separate
24 issues could conceivably --

25 THE COURT: That's not an amendment issue. You're

1 only --

2 MR. BAMBERGER: Understood.

3 THE COURT: -- dealing with the amendment.

4 MR. BAMBERGER: Understood, Your Honor. Okay.

5 THE COURT: Don't overthink it.

6 MR. BAMBERGER: I understand what Your Honor is
7 saying.

8 THE COURT: Just don't overthink it. Just --
9 we've got an amendment issue. Let's deal with the amendment
10 issue. The next thing we'll have is a service issue. Let's
11 deal with the service issue. And I know on the service
12 issue we have to deal with each one individually. And yes,
13 Cleary, if you've been representing them for ten years,
14 think about it. So, all right.

15 Now then, okay. Where are we? Y'all tell me
16 where we are.

17 MR. ELSBERG: So this is David Elsberg, Your
18 Honor, for the Joint Liquidators again, for the record. So
19 we've talked about the motion to amend. Your Honor has been
20 very clear. I think Your Honor has also been very clear
21 that we should not even be talking about a motion to dismiss
22 right now because --

23 THE COURT: Not until I have a complaint.

24 MR. ELSBERG: Yes. Understood loud and clear,
25 Your Honor.

1 THE COURT: Okay.

2 MR. ELSBERG: So we will do the motion to amend on
3 the schedule that Your Honor just mentioned. I will --

4 THE COURT: Okay.

5 MR. ELSBERG: -- now raise another issue that we
6 raised at the last conference which is discovery. We would
7 like to move forward with discovery. We have not gotten any
8 discovery yet. I can address that now if Your Honor --

9 THE COURT: I will let you have discovery and I'll
10 tell you, I've already thought about this on the -- wait a
11 minute. Which one did I say? Give me a second because I've
12 thought about this already.

13 MR. ELSBERG: Yes, Your Honor.

14 THE COURT: On the service issue only right now.
15 On personal jurisdiction. It's personal jurisdiction.

16 MR. ELSBERG: Yes, Your Honor.

17 THE COURT: That's next. Don't -- or both.
18 You've got to have some discovery on the service. You've
19 got to know how long they've either been in contact with the
20 law firm that was served or whatever. You've got to have
21 some discovery on that. We're limiting discovery to that at
22 this point.

23 MR. ELSBERG: Okay. So to be clear, Your Honor --

24 THE COURT: Okay.

25 MR. ELSBERG: And again, this is -- I want to get

1 clarity here so I know what Your Honor is saying. Personal
2 jurisdiction involves issues that go beyond service.

3 THE COURT: That's true.

4 MR. ELSBERG: So I just want to be clear as to
5 whether Your Honor is saying we can do discovery on personal
6 jurisdiction or only the sliver that has to do with service.

7 THE COURT: All right, let me think about that a
8 minute, because these are my orders --

9 MR. ELSBERG: Yes, Your Honor.

10 THE COURT: My first was, let's get the complaint
11 clear so everybody knows what complaint we're dealing with.

12 The second one is service and then my third is
13 personal jurisdiction, but the personal jurisdiction has two
14 sort of -- it is the first one that I see that broadens out
15 -- well, not the complaint, but broadens out into lumping
16 together, whether there's personal jurisdiction over the
17 defendants who redeemed shares through the U.S.
18 correspondent banks that you said or personal jurisdiction
19 over the defendants based on their decision to invest in the
20 Fairfield funds, knowing, intending that the funds would be
21 invested in substantially all the money in the U.S. bank --
22 U.S.-based BLMIS.

23 So that is a broad question. I'll tell you what.
24 We'll do service of process at the same time we do the
25 amended complaints. Let's put those together, but not

1 together in briefing. I want separate briefs. But we'll
2 put together in timeframe. Then we've got the personal
3 jurisdiction which is the next one. That's for service.

4 I'll tell you what. We're only -- okay, 21 days,
5 21 days, 14 days in front of me. So we're back in front of
6 me and you can do this rather quickly, rather simply. I'm
7 really looking at limited page numbers here and I'm talking
8 about limited page numbers on these because this is what
9 we're dealing with, and then we make a decision on personal
10 jurisdiction and if there's discovery on that when you come
11 back.

12 MR. ELSBERG: Okay, Your Honor. Again, just so
13 that I'm clear, 21 days, 30 days --

14 THE COURT: I didn't give him 30.

15 MR. ELSBERG: I apologize.

16 THE COURT: I gave him 21.

17 MR. ELSBERG: I apologize.

18 THE COURT: I didn't give him any more than I gave
19 you.

20 MR. ELSBERG: Okay. I apologize, Your Honor.

21 THE COURT: And then you've got to wait for me to
22 hear you. I'm not going to -- I'm not going to hear it the
23 next day. I've got to digest everything y'all said.

24 MR. ELSBERG: Of course, Your Honor. Will Your
25 Honor permit us to submit a reply brief?

1 THE COURT: No.

2 MR. ELSBERG: Okay, Your Honor.

3 THE COURT: That's a Sur-Reply under the Code of
4 Civil Procedure and they're not usually permitted in federal
5 court.

6 MR. ELSBERG: Okay, Your Honor.

7 THE COURT: So throw everything in it.

8 MR. ELSBERG: Understood. And just to be clear,
9 Your Honor, on discovery, there's the broader personal
10 jurisdiction and --

11 THE COURT: That's a different issue. We're
12 talking --

13 MR. ELSBERG: Understood.

14 THE COURT: -- about service only.

15 MR. ELSBERG: And yes, and on service, is Your
16 Honor permitting us to get discovery on service?

17 THE COURT: Okay, then I've got to expand that, I
18 bet, and yes, I do. Okay. So the July hearing -- y'all set
19 this up -- the July hearing will be on the amended
20 complaint. The August hearing will be on service. And
21 y'all can have limited service on finding about proper
22 service. I think I'm putting in a quagmire here, though.
23 Because we've got service everywhere and the one issue that
24 Judge Bernstein dealt with was whether service to the law
25 firm was sufficient service.

1 MR. ELSBERG: Yes, Your Honor, and that ruling
2 remains to be applied.

3 THE COURT: I understand. Understand. Okay. All
4 right. I want you to, on these -- on the motion to amend,
5 I'm going to have you just serve the law firms. I mean, if
6 you haven't already, that's what we're going to be doing.
7 That's to the complaint. Serve the law firms with the
8 complaint and the motion to -- the motion to amend and then
9 you're going to have the complaint attached. All right.

10 Okay, so I've got that in my mind. Now service is
11 still a bit of a tricky issue because of discovery on that.
12 Do you need discovery? You've had these law firms in --
13 you've had the law firms in on service. These law firms
14 have been representing.

15 MR. ELSBERG: Your Honor, we thought we wouldn't
16 need any discovery and --

17 THE COURT: I don't think you do, either, because
18 you've got the electronic case filing. We see who's
19 representing them on the electronic case filing and how long
20 they've been representing them. And we're only talking
21 about the law firms.

22 MR. ELSBERG: That is why, Your Honor, we don't
23 understand --

24 THE COURT: I agree with you.

25 MR. ELSBERG: -- they're not --

1 THE COURT: I was not clear. Right. I agree with
2 you.

3 MR. ELSBERG: But because they're not stipulating,
4 they're obviously saying that what's on the docket is not
5 enough and so I want to find out what is it that you think
6 is missing, and then I --

7 THE COURT: What's the defense to that? Y'all
8 been representing them on the docket. Tell me.

9 MR. BAMBERGER: Your Honor, I just want to clear
10 up a couple things. So with respect to clients who were
11 represented by Cleary Gottlieb which is a number of
12 different clients, we're not contesting service. We want to
13 preserve the issue for appeal. There's a stipulation that
14 the parties are negotiating. With respect to my clients,
15 the Court has already ordered service, HSBC.

16 THE COURT: Okay.

17 MR. BAMBERGER: And there are other defendants who
18 will stipulate to service. There --

19 THE COURT: Okay.

20 MR. BAMBERGER: I understand there are a few
21 differently situated or defendants who view themselves as
22 differently situated who --

23 THE COURT: Which ones are they? Tell us the ones
24 they are.

25 MR. BAMBERGER: I don't know which one they are

1 off the top of my head.

2 THE COURT: Mr. Eisner, do you know which ones
3 they are?

4 MR. ELSBERG: I'm sorry, was that directed at me,
5 Your Honor?

6 THE COURT: Yes. Do you happen to know which ones
7 are not --

8 MR. ELSBERG: So Your Honor --

9 THE COURT: Is anyone on the phone today
10 representing any other clients in this matter?

11 MR. LEVIN: Yes, Your Honor.

12 THE COURT: Okay. Mr. Levin, who you
13 representing? State your name for the record.

14 MR. LEVIN: Richard Levin, Jenner and Block, LLP.
15 Your Honor, we represent something that is characterized in
16 the caption as Unifortune Conservative Fund Side Pocket,
17 with a slash before it with the name Allianz Bank. So it's
18 not even a legal entity as it's framed in the caption, but
19 we represent the Unifortune entity.

20 THE COURT: Can you give the case number on that,
21 please?

22 MR. LEVIN: Yes, I can, but it'll take me just a
23 moment. I didn't expect to speak today, Your Honor, only
24 because of your question am I raising this.

25 THE COURT: Thank you for speaking up, because it

1 would be important.

2 MR. LEVIN: Yes, it is in -- I believe it is in
3 10-3636. I'm double checking that, Your Honor.

4 THE COURT: That's the HSBC Private Bank issue.

5 MR. LEVIN: Bear with me. I'm getting the
6 complaint up in front of me right now. Take me just a
7 moment.

8 THE COURT: Mr. Bamberger, I thought that was your
9 client.

10 MR. BAMBERGER: There are a number of defendants.
11 They -- HSBC is my client. There are a number of defendants
12 --

13 THE COURT: Okay.

14 MR. BAMBERGER: -- named in each.

15 MR. LEVIN: Okay, I now have the complaint. It's
16 opening.

17 THE COURT: And I just need to know today who's
18 going to be objecting to service and Mr. Levin you're saying
19 that you will be, according to your client?

20 MR. LEVIN: Yes, Your Honor, and the reason is,
21 yes, we've appeared in this case, reserving all points of
22 personal jurisdiction and service. The point is that the
23 client was served by mail and the law firm was not served.
24 The client then came to us and hired the law firm. That's a
25 different situation than Cleary and HSBC.

1 THE COURT: Okay. All right.

2 MR. LEVIN: And I believe there are others who
3 were in that same --

4 THE COURT: Okay --

5 MR. LEVIN: -- circumstance.

6 THE COURT: I only want you speaking for your
7 client. And your client is who, again?

8 MR. LEVIN: The caption reads Allianz Bank,
9 SA/Unifortune Conservative Side Pocket so it is -- the name
10 of the defendant is two entities linked together so it's not
11 clear which entity, and the second name, which is our
12 client, is not really a legal entity at all, which we've
13 made the liquidators aware of from time to time.

14 THE COURT: Okay. Mr. Eisner -- yes.

15 MR. LAVINE: This is Adam Lavine of Kobre and Kim
16 and here I'm appearing on behalf of Allianz Bank Financial
17 Advisors SPA.

18 THE COURT: Okay. And what case number are you
19 on?

20 MR. LAVINE: This is in actually the same cases
21 that Mr. Levin was just discussing.

22 THE COURT: The 3633 -- 10-3633?

23 MR. LEVIN: No, 3636, Your Honor.

24 THE COURT: Oh, excuse me. Then I had you on a
25 different one. Okay. That's different. Okay.

1 MR. LAVINE: Yes, there are actually two adversary
2 proceedings.

3 THE COURT: There are, exactly. 10-3635 and 10-
4 3636.

5 MR. LAVINE: Exactly and in both of those cases,
6 as Mr. Levin was explaining, the first part of the defendant
7 name is Allianz Bank SPA. That also is not an entity, but
8 our firm represents Allianz Bank Financial Advisors SPA and
9 we are taking a similar position or the same position as Mr.
10 Levin and are similarly situated in that we are continuing
11 to contest service and our firm was likely -- was also
12 retained subsequent to the purported service.

13 THE COURT: Okay. We're only speaking about
14 service, so that's what we have here. Very good. So Mr.
15 Lavine and Mr. Levin and Mr. Eisner, we've got those.
16 Someone else --

17 MR. ASHER: Your Honor?

18 THE COURT: Yes, Mr. Asher?

19 MR. ASHER: Yes. Nate Asher and I represent
20 Merrill Lynch entities, and in the Zurich Capital Markets
21 action that's 10-03634 --

22 THE COURT: Okay. Let me find that again.

23 MR. ASHER: Okay.

24 THE COURT: 10-03634, okay, the Zurich Capital
25 Markets, but you represent Merrill Lynch?

1 MR. ASHER: Yes, and so one of the entities named
2 as a defendant there is Merrill Lynch Bank and we have
3 maintained throughout that Merrill Lynch Bank is a non-
4 existent entity and so we are contesting service on that
5 basis.

6 THE COURT: And that's the only thing you contest
7 at this time is just service. Okay.

8 MR. ASHER: And when I say contesting, what I mean
9 is we are not entering into the stipulation that Mr. Elsborg
10 and Mr. Bamberger described that would accept service to the
11 law firms. That's right. We haven't filed anything along
12 those lines.

13 THE COURT: Okay. Okay. Are you also
14 representing Merrill Lynch in 11-01463?

15 MR. ASHER: Yes.

16 THE COURT: Okay, that -- but that's a different
17 issue, correct?

18 MR. ASHER: That's right. Thank you, Your Honor.

19 THE COURT: Thank you. Okay. Anyone else?

20 MR. KLEINHAUS: Your Honor, Emil Kleinhaus from
21 Wachtell, Lipton, Rosen, and Katz. Hopefully you can hear
22 me okay.

23 THE COURT: Perfectly. You're good.

24 MR. KLEINHAUS: I represent Banque Pictet & Cie, a
25 Swiss bank. Our clients --

1 THE COURT: Give me the case number, please?

2 MR. KLEINHAUS: Sure, it's the same case as Mr.
3 Levin, the two (indiscernible) cases, 10-34 -- excuse me,
4 10-3635 and 10-3636.

5 THE COURT: Okay.

6 MR. KLEINHAUS: There is also a action against
7 Pictet only, 10-3764, that has been dismissed.

8 THE COURT: Okay.

9 MR. KLEINHAUS: -- by Judge Bernstein.

10 THE COURT: That's --

11 MR. KLEINHAUS: In the 10-3635 and 10-3636
12 matters, our client is similarly situated to other clients
13 you've heard about such as Mr. Levin's clients in the sense
14 that their history -- they got a mailing with the complaint
15 but their law firm at the time was not contemporaneously
16 mailed the complaint, and on that basis, our clients have
17 not at this time agreed to stipulate to service of the
18 complaint solely on the basis of the Cleary ruling.

19 THE COURT: Okay. If the other one was dismissed,
20 we're not dealing with it. That's fine.

21 MR. KLEINHAUS: That was just for information.

22 THE COURT: Okay.

23 MR. KLEINHAUS: I was focusing on the two.

24 THE COURT: Mr. Eisner, are you keeping up with
25 these that are representing the people that -- because those

1 are the ones that I'm probably going to allow you some
2 discovery on. Yes, someone else?

3 MS. XU: Morning, Your Honor. This is Donna Xu
4 with Kobre and Kim and I represent the EFG defendants. We
5 are --

6 THE COURT: Give me the case number, please.

7 MS. XU: Sure, it's 10-3634, 10-3635, and 10-3636.
8 We are contesting service at this time but we're continuing
9 to evaluate with the stipulation that Mr. Elsberg and Mr.
10 Bamberger noted pending finalization of that language.

11 THE COURT: Okay. Again, Mr. Elsberg, you deal
12 with this. Okay. Next.

13 MR. HARNIK: This is Steve Harnik.

14 THE COURT: Yes, Mr. Harnik.

15 MR. HART: We represent the Vorarlberger Landes-
16 Und Hypothekenbank. It's an Austrian bank. It's 10-3635
17 and 10-3636.

18 THE COURT: So the 35 and the 36, most everybody's
19 appearing on that -- those particular adversaries?

20 MR. HARNIK: Correct.

21 THE COURT: And you're saying the same thing.

22 MR. HARNIK: Yes, Your Honor.

23 THE COURT: Okay. I need y'all talking soon.

24 Next?

25 MR. CIRILLO: Your Honor, Richard Cirillo of King

1 and Spalding representing National Bank of Kuwait and NBK
2 Bank Suisse SA. We are in the same position in 3635 and
3 3636; although, it is likely we will stipulate as to one of
4 those clients. The other, I have the same issues
5 outstanding.

6 THE COURT: Okay, just so y'all know, I'm making a
7 decision on service rather quickly. Y'all need to make your
8 decision on what you're going to do about it. I'm just
9 going to tell y'all that up front. Next?

10 MR. FINN: Good morning, Your Honor. This is
11 Andrew Finn from Sullivan and Cromwell on behalf of Bank J.
12 Safra Sarasin in Case No. 10-3636 --

13 THE COURT: Okay.

14 MR. FINN: -- and also Case 10-3635. We are in a
15 somewhat similar position. We are likely going to
16 stipulate, but there's a unique issue in our case in that
17 the original defendant, the defendant named, is called Bank
18 Sarasin. At the time the complaints were filed against Bank
19 Sarasin, our client subsequent to that engaged in a merger
20 and there was different counsel and we are just confirming
21 the facts with respect to the prior entity to confirm --

22 THE COURT: we can deal with this without briefs.
23 Okay.

24 MR. FINN: Yeah.

25 THE COURT: I hear you.

1 MR. FINN: So I think that we'll get it resolved.
2 I just want to make it clear that we have not entered into
3 the stipulation yet for that reason and hopefully we can
4 reach out to liquidators' counsel --

5 THE COURT: And honestly, we may allow him to
6 amend with corrected names. Next person?

7 MR. PREUSS: Your Honor?

8 THE COURT: Yes.

9 MR. PREUSS: This Jascha Preuss and Wuersch and
10 Gering. We represent three entities, one of which is
11 Dresdner Bank Schweiz which is a Swiss defendant and two of
12 which are Liechtenstein defendants -- LTG Bank in
13 Liechtenstein AG and Liechtensteinische Landesbank here sued
14 as Liechtensteinische LB Reinvest AMS. This pertains to the
15 cases 10-03635 and 36. Our Liechtenstein clients are
16 situated somewhat differently from the Swiss defendants in
17 that Liechtenstein is not a party to the Hague Service
18 Convention. That's number one. So it is somewhat unclear
19 whether the ruling would be applicable to these defendants.

20 Number two, at least Liechtensteinische Landesbank
21 or Liechtensteinische LB Reinvest was not served with
22 service on counsel. So we are still evaluating whether we
23 are going to stipulate or not, but at this point, we must
24 preserve the service issue.

25 THE COURT: Okay, Mr. Eisner, remind me to decide

1 a little bit later on this, if you need discovery for proper
2 names. I have someone on the phone at 646 are -- and it
3 looks like they're trying to speak. Anyone else? Okay.

4 MR. HALPER: Your Honor, this is Rick Halper with
5 McKool Smith and we represent Bank Julius Baer, also in the
6 same two actions along with many of the other defendants,
7 10-3536 and 10-3636. Similarly, we're in a position where
8 we are valuating the proposed stipulation on this issue
9 which is in the works but I understand is still being worked
10 out. Our client will decide if they're joining the
11 stipulation, but otherwise, as of right now, still maintains
12 their rights with respect to the service issue.

13 THE COURT: Anyone else?

14 MR. FREEHILLS: Your Honor --

15 THE COURT: Yes, sir.

16 MR. FREEHILLS: Herbert Smith Freehills on behalf
17 of a defendant in the same two actions, Bank Hapoalim
18 Switzerland, Limited. We likewise are (sound drops)
19 evaluate and expect to enter into the stipulation, but
20 reserve our rights for now.

21 THE COURT: Mr. Eisner, I want to take a step back
22 because one of the things I want you to look into and I will
23 allow you to have discovery on this, is getting the names
24 properly. Let's make sure we have the proper defendants on
25 this. And --

1 MR. LEVIN: Your Honor?

2 THE COURT: Yes, sir.

3 MR. LEVIN: May I -- Richard Levin. May I be
4 heard on that issue?

5 THE COURT: Yes, you may.

6 MR. LEVIN: The case law is clear that --

7 THE COURT: I don't have it in front of me, Mr.
8 Levin.

9 MR. LEVIN: I'm sorry.

10 THE COURT: You can argue that when it comes up at
11 the time.

12 MR. LEVIN: Let me explain, Your Honor. My point
13 is that if the defendant has not been properly served, other
14 than for discovery on personal jurisdiction, not on service
15 process, it's not clear that the defendant is subject to the
16 jurisdiction of the Court for discovery.

17 THE COURT: You can oppose it. You can --

18 MR. LEVIN: I just wanted to preserve --

19 THE COURT: -- oppose the motion --

20 MR. LEVIN: -- the issue, Your Honor.

21 THE COURT: -- to dismiss. We're going to go with
22 this right now. We're trying to figure this whole thing
23 out, so I'm not changing what we're doing right this moment.

24 MR. LEVIN: I just wanted to preserve the issue.

25 THE COURT: You can appeal it later, Mr. Levin.

1 MR. LEVIN: Thank you.

2 THE COURT: You can appeal it after I decide.

3 Yes, ma'am. Who's speaking?

4 MS. VALENTINE: This is Erin Valentine from
5 Chaffetz Lindsey. I represent Six Sis AG in 10-3636 and 10-
6 3635. We are similarly situated to the other defendants
7 who's raised issue today and we will continue to evaluate or
8 evaluate the stipulation once it's finalized.

9 THE COURT: I -- guys, I'm not at a stipulation.
10 I'm at complaint and service. And I know that Cleary's been
11 taking the heavy lifting on this. You've got a whole --
12 we've got -- we're moving this litigation forward one way or
13 the other.

14 MS. VALENTINE: I appreciate that, Your Honor, and
15 so for the time being, we continue to preserve our arguments
16 with respect to service.

17 THE COURT: Okay. We are ruling on service of
18 process here. We're not at evidentiary and we're not at a
19 stip. Okay. All right. Mr. Eisner, where am I? Help me,
20 here.

21 MR. ELSBERG: Yes, Your Honor. This is David
22 Elsberg --

23 THE COURT: And Mr. Bamberger will join in.

24 MR. ELSBERG: Yes. So I --

25 THE COURT: Excuse me. Let me do one thing.

1 MR. ELSBERG: Yes, Your Honor.

2 THE COURT: I'm sorry to do that. Is anyone else
3 on the phone for an entity on the service of process that
4 has not put their name and the case number on the record?

5 MS. GLIMP: Good morning, Your Honor. This is
6 Cherelle Glimp from DLA Piper. We represent Banca Arner SA
7 in the two (indiscernible) proceedings, 10-3635 and 10-3636.
8 We, like some of the other defendants who've spoken today,
9 are still evaluating the stip and we would like to preserve
10 our arguments with respect to service of process.

11 THE COURT: Excellent. They are preserved. Very
12 good. Okay. And I don't know why everybody's talking about
13 the stip. Is it the stip to service? Is that what
14 everybody's saying?

15 MR. ELSBERG: Yes, Your Honor, the --

16 THE COURT: Okay.

17 MR. ELSBERG: That's the idea.

18 THE COURT: Okay, thank you.

19 MR. ELSBERG: And, but there is no stipulation
20 that exists yet and we have not gotten any clarity on who's
21 willing to sign it or not, so --

22 THE COURT: Well, and it's --

23 MR. ELSBERG: -- putting aside the stip --

24 THE COURT: -- a legal conclusion for me to make
25 at the time it's brought in front of me.

1 MR. ELSBERG: Exactly.

2 THE COURT: And that's what we're dealing with.

3 MR. ELSBERG: Yes, Your Honor.

4 THE COURT: Thank y'all very much for trying to
5 put a stip together. I do appreciate that.

6 MR. ELSBERG: Yes, Your Honor. So --

7 MR. LAMBERT: Your Honor?

8 THE COURT: Yes. Yes?

9 MR. LAMBERT: This is Michael Lambert. I
10 represent a defendant named Private Space, Ltd., which is a
11 defendant in Case 10-3630.

12 THE COURT: Okay.

13 MR. LAMBERT: We have raised an objection to
14 service of process. They purported to serve our client in
15 Monaco at an address that doesn't work for us, and so we
16 have -- totally reserving our rights on the service of
17 process.

18 THE COURT: Mr. Eisner, you have that one?

19 MR. ELSBERG: Yes, Your Honor. We've been
20 tracking all of these.

21 THE COURT: Okay, that's a different one, though.
22 Every -- almost everything else was 3634, 3635, and 3636.
23 This one was unique.

24 MR. ELSBERG: Understood, Your Honor.

25 THE COURT: Yes, I have a 202 in Washington. Do

1 you wish to speak?

2 MR. PALFIN: Yes. Your Honor, this is Keith
3 Palfin, Winston and Strawn. I represent BBVA Swiss in 3636
4 and 3635. We have not -- we're preserving out service
5 objections for the time being but we do not expect to
6 contest service. We expect that we will enter into the
7 stipulation that has been mentioned which will mean that
8 that will not be an issue that Your Honor has to confront.

9 THE COURT: Very good. Thank you very much. And
10 by the way, we're figuring this out pretty quickl7y, because
11 I want this case in front of me instead of these procedural
12 matter. Yes, Mr. Eisen -- anyone else? Anyone else has not
13 put their name on the record and stated their objection?

14 MR. CONNELLY: Your Honor, Rahman Connelly from
15 Pillsbury Winthrop Shaw Pittman. We represent InCore Bank
16 and Falcon Private Bank in the 35 and 36 actions. We, like
17 some of the other defendants -- or some of the other counsel
18 that you heard earlier, are evaluating the stipulation and
19 making a determination accordingly.

20 THE COURT: Very good. Anyone else?

21 MR. LOVELAND: Yes, Your Honor, Benjamin Loveland
22 from WilmerHale. We represent four separate Swiss
23 defendants in the 3635 and 3636 actions and we are similarly
24 situated to the last two gentlemen who spoke in that we are
25 continuing to evaluate the stipulation which had been

1 circulated concerning the service issue.

2 MR. ZULACK: Your Honor, this is John Zulack. We
3 represent nine defendants in the 3536 -- 3635 and 3636
4 action. We've agreed to the stipulation --

5 THE COURT: Okay.

6 MR. ZULACK: We've already agreed to the
7 stipulation and we really think that is the best way to
8 proceed with this.

9 THE COURT: Thank you so much. Yes.

10 MR. ELSBERG: Your Honor, this is David Elsberg,
11 if I could just make a comment.

12 THE COURT: Certainly, please.

13 MR. ELSBERG: Thank you, Your Honor. Just to be
14 clear, there is no stipulation that exists right now.
15 Drafts have been going back and forth. No language has been
16 agreed to. What I believe the stipulation will end up
17 saying and should end up saying is that the service issue --
18 that whoever signs the stipulation is not going to further
19 brief or argue service to Your Honor while preserving their
20 rights to appeal.

21 THE COURT: You know, it's up to every one of them
22 and it now shows that everyone has an opinion on it. They
23 can have an opinion on it. They're going to have to brief
24 it and be in front of me --

25 MR. ELSBERG: Yes.

1 THE COURT: -- when we decide to rule on the
2 service issue, if they don't sign on to some stipulation
3 with you.

4 MR. ELSBERG: Perfect, Your Honor.

5 THE COURT: And I just want to be clear. So we're
6 going to set a briefing schedule for everyone that has
7 spoken. They have the ability to brief also and brief --
8 because just as I said at the very beginning of this
9 hearing, service is a case-by-case issue and I understand
10 that. I think everybody here understands that. So we will
11 give everybody their right to brief, defendant by defendant.
12 If they sign a stipulation with you, thank you very much. I
13 personally appreciate that.

14 MR. ELSBERG: Yes, Your Honor.

15 THE COURT: So.

16 MR. ELSBERG: And --

17 THE COURT: Go ahead.

18 MR. ELSBERG: Yes. So in terms of where we are,
19 what I'm hoping is the case, is that whoever has raised
20 their hand today and said, I have an issue with service,
21 that will be the universe of defendants from whom we take
22 quick discovery.

23 THE COURT: Well, just so you know Mr. Eisner, the
24 reason I keep saying, does anyone else wish to be heard,
25 does anyone else wish to be heard, as of today, anyone that

1 was not on the record and did not preserve their right is --
2 the service is proper.

3 MR. ELSBERG: Thank you, Your Honor. That's what
4 I wanted to clarify.

5 THE COURT: So I want to make sure. I will say it
6 one more time. Is there anyone in Court today that has not
7 put their objection on the record?

8 MR. PACCIONE: Your Honor, Anthony -- Your Honor,
9 Anthony Paccione representing Coutts and Lloyds in 10-3636.
10 We are similarly in the position of hoping that the
11 stipulation will be signed, but since the representations
12 are there is no stipulation, I guess it's best to preserve
13 our record on service issues, as we do now.

14 THE COURT: Thank you very much. Anyone --

15 MR. BOCCUZZI: Your Honor?

16 THE COURT: -- else? Yes, sir.

17 MR. BOCCUZZI: Your Honor, Carmine Boccuzzi from
18 Cleary Gottlieb. I know you've been speaking to Mr.
19 Bamberger, but --

20 THE COURT: Yeah, I was going to say, y'all are at
21 both ends of my screen.

22 MR. BOCCUZZI: Okay. I'm on whatever side. We're
23 representing a group of Citibank entities and we're working
24 on the stip as well but, you know, given the -- that
25 there's, as Mr. Elsberg has said, the stip isn't finalized,

1 I just wanted to preserve that we've noted an objection but
2 we're working to resolve it for various entities including
3 Citivic which is in the 10-03634 case.

4 THE COURT: Thank you. Thank you very much.
5 Again --

6 MR. SHAMAH: Your Honor --

7 MR. LOVELAND: Your Honor, apologies. Benjamin
8 Loveland from WilmerHale again. I left out one defendant
9 that we represent in a separate case from the 3635 and 3636
10 actions and that is Ron and Bodmer Banquiers in Case No. 11-
11 01581

12 THE COURT: Very good.

13 MR. STRONG: Your Honor, this is Fletcher Strong
14 from Wollmuth, Maher, and Deutsch. We represent three
15 clients, Fairfield Investment Fund Limited, FIF Advanced,
16 and Fairfield Investment GCI in the two larger actions that
17 have been discussed, 3635 and 3636. We anticipate also
18 joining the draft stipulation that has been circulated, but
19 we have raised service issues that we would like to
20 preserve.

21 THE COURT: And you're reserving your rights.
22 Yes. Anyone else?

23 MR. SHAMAH: Your Honor, Daniel Shamah, O'Melveny
24 and Myers. Represent two Credit Suisse related entities in
25 3635 and 3636 and I join in the other remarks. We were

1 intending to joint that stipulation once it was finalized,
2 but in light of the comments, we'll reserve our rights as
3 well.

4 THE COURT: Thank you.

5 MR. KESSLER: Good morning, Your Honor. Thomas --

6 MR. BAMBERGER: Your Honor --

7 MR. KESSLER: -- Gottlieb. Similar to my
8 colleague --

9 THE COURT: Mr. Kessler -- Mr. Kessler, if you
10 would repeat your name. It --

11 MR. KESSLER: Yes, Your Honor.

12 THE COURT: You were not picked up on the record
13 clearly.

14 MR. KESSLER: Understood. It's Thomas Kessler
15 from Cleary Gottlieb. We represent the BNP Suisse
16 defendants also in 35 -- 3635 and 3636. Similar to my
17 colleague Mr. Boccuzzi, we intend to join the stipulation
18 once it's finalized, but given the comments this morning,
19 we'll reserve our rights until that's done.

20 THE COURT: Since your partner's helping write it.
21 Okay. Note.

22 MR. BAMBERGER: I think Mr. Kessler is actually
23 writing it, Your Honor.

24 THE COURT: Who is? I'm sorry?

25 MR. BAMBERGER: I think Mr. Kessler who just spoke

1 is actually writing it.

2 THE COURT: Okay.

3 MR. BAMBERGER: Your Honor, can I just raise one
4 point on this, which is, the parties have briefed and Judge
5 Bernstein's decision addresses service into Switzerland.
6 And the stipulation that's currently circulating addresses
7 application of that ruling with respect to service into
8 Switzerland to other defendants, and I think we've heard
9 from a number of defendants -- large number of defendants on
10 that issue. But what I'm just not certain of sitting here
11 right now, Your Honor, is whether defendants who (sound
12 drops) in other jurisdictions have sort of done the analysis
13 to know whether they need to preserve service issues --

14 THE COURT: They're not here.

15 MR. BAMBERGER: -- jurisdictions. The issue --

16 THE COURT: You're speaking for people that aren't
17 your clients.

18 MR. BAMBERGER: I am, Your Honor, but only because
19 the issue of service was preserved by Judge Bernstein's
20 prior --

21 THE COURT: You don't represent them. If Judge
22 Bernstein reserved it, it's up to them to bring it to me.

23 MR. BAMBERGER: Understood, Your Honor.

24 THE COURT: You're on here today. We're doing
25 what's here today.

1 MR. BAMBERGER: Understood, Your Honor.

2 MR. PALFIN: Your Honor? Your Honor, Keith Palfin
3 again. I just needed to add one additional client if we're
4 talking about service beyond Swiss defendants, so I would
5 preserve service objections for Altipro Master Fund in Case
6 3627.

7 THE COURT: 3627? Okay. I got you.

8 MR. ASHER: And Your Honor, this is Nate Asher
9 again. We did reference Merrill Lynch International
10 earlier, but in light of all the comments that have been
11 made, I'd like to just take the same position as to Merrill
12 Lynch International that we'd like to reserve our rights,
13 but evaluate the stipulation.

14 THE COURT: And that's 11 -- what case number?

15 MR. ASHER: That is --

16 THE COURT: I'm not doing a blanket --

17 MR. ASHER: Apologies for the delay --

18 THE COURT: -- case-by-case basis.

19 MR. ASHER: It's 11-01463.

20 THE COURT: That's what I thought it was, but you
21 had to tell me. Okay.

22 MR. ASHER: Thank you.

23 THE COURT: Anyone else?

24 MR. CIRILLO: Your Honor --

25 MR. MORRIS: Your Honor --

1 MR. CIRILLO: This is Richard Cirillo of King and
2 Spalding. Some of the comments seem to have referred to
3 clients and cases that are before the District Court and I
4 have several clients in the appellate cases that are not
5 before Your Honor.

6 THE COURT: If they're not before me, they're not
7 before me.

8 MR. CIRILLO: Good. Okay. That's all I wanted to
9 clarify.

10 THE COURT: Listen, I'm not one of those judges
11 that reads the briefs that go up on the Court of Appeals.
12 Once it's on appeal, it is not my case anymore. That
13 doesn't -- excuse me, not my case -- not my issue. That
14 belongs to somebody else, not me. Okay.

15 MR. MORRIS: Your Honor, it's David Morris from
16 Fried Frank. We also have two clients we would like to
17 reserve our rights --

18 THE COURT: Okay.

19 MR. MORRIS: On the service issue. We're in cases
20 that other people have already been in. It's the
21 (indiscernible) Bank and Centrum Bank.

22 THE COURT: Okay.

23 MR. MORRIS: Thank you, Your Honor.

24 THE COURT: Okay.

25 MR. MARTIN: Your Honor, Randy Martin for Shearman

1 and Sterling. I'd also reserve our rights on behalf of my
2 clients if we're dealing with non-Swiss entities. Those or
3 Nomura International PLC, about a half dozen cases involving
4 (indiscernible) defendants and (indiscernible).

5 THE COURT: Okay. Anyone else? I'm going to take
6 a quick break. I need a break. I don't know how to do a
7 break on this thing.

8 MR. ELSBERG: Your Honor, we could press mute and
9 stop video --

10 THE COURT: Oh, you could press mute. Thank you.
11 Oh, shoot. I'm learning. I'm learning.

12 MR. ELSBERG: As we all are, Your Honor.

13 THE COURT: I'm going to take a break.

14 MR. BAMBERGER: How long, Your Honor?

15 THE COURT: Yes? Yes?

16 MR. BAMBERGER: I'm sorry, how long?

17 THE COURT: Oh, five minutes. I don't take long
18 breaks. Ten minutes, since we're at home.

19 (Recess)

20 THE COURT: I see other people beginning to join
21 us. There -- people are coming in. I particularly want Mr.
22 Bamberger back in. I think he's at the office, so he may
23 have to be talking to Mr. Boccuzzi and Mr. Kessler.

24 MS. VICENS: Judge Morris, hi. My name is Lisa
25 Vicens. I'm also a lawyer with Cleary Gottlieb. I'm -- we

1 actually represent Caceis Bank Luxembourg on -- the matter
2 number is 10-3635 and 3636. I just wanted to advise you
3 that we would also be joining with the other defendants that
4 are represented by Cleary and will be agreeing to the
5 stipulation on the service issues, but we wanted to appear
6 and just to reserve our rights.

7 THE COURT: Thank you. I hope Mr. Levin is on the
8 phone because we did a quick search and in Ganpat v. Eastern
9 Pacific Shipping, which is a Southern District of New York -
10 - Eastern District of Louisiana case, it's just a quick
11 search, discovery on service of process was allowed. It's -
12 - that's a very quick search. We just did it sort of in off
13 time because I wanted to make sure I was secure in that.

14 But that being said, I hope everybody's back on
15 the phone and on the -- we are on the record. And on the
16 record, I think everyone -- well, Mr. Kessler, are you still
17 on the phone? Because you're the one I think I'm going to
18 put on the hot seat right now.

19 MR. KESSLER: I am, Your Honor.

20 THE COURT: Mr. Kessler, you're the one sort of
21 putting together this stipulation?

22 MR. KESSLER: That's right, Your Honor.

23 THE COURT: Okay. Then I think I'm going to just
24 let you know and I wanted you to hear this, that I am going
25 to ask the defendants to bring their 12(b)(5) motions on

1 service of process by June -- let me look at the calendar.
2 I can't look at the calendar. I've got -- just so y'all
3 know, I have to turn every instrument off to make sure I
4 have enough Wi-Fi to talk to y'all. So how about the -- how
5 about June 3rd, which is, I believe, a Thursday?

6 MR. KESSLER: I think that timing works, Your
7 Honor. I would clarify I think the defendants have already
8 moved under 12(b)(5) and I think what we'd be talking about
9 is the Liquidators' motion for alternative service.

10 THE COURT: Okay. What docket number is that?

11 MR. KESSLER: That's an excellent question, Your
12 Honor.

13 THE COURT: Because I don't know that I've seen
14 it. And is that in each case or is that in the -- remember,
15 service has to be on a case-by-case basis. That was Judge
16 Bernstein's ruling.

17 MR. KESSLER: So Your Honor, I don't believe that
18 the Liquidators -- so the Liquidators have not sought
19 alternative service as to every Swiss defendant. There was
20 a request for alternative service in respect of the
21 guideline.

22 THE COURT: we're not even on Swiss. I think
23 that's been dealt with, hasn't it, by Judge Bernstein? Am I
24 wrong?

25 MR. KESSLER: No (sound drops). Well, in certain

1 determinations as -- of law have been made that are
2 applicable to HSBC Swiss, Your Honor, there are --

3 THE COURT: Tell you what. I want a new motion on
4 every single defendant on service. So either you sign on to
5 the stipulation or you file your motion. That way Mr.
6 Eisner and I know or the Liquidators know and I know which
7 one's going to be contested and it's not a 12(b)(6). This
8 is a 12(b)(5). We're talking about service.

9 MR. KESSLER: I understand, Your Honor.

10 THE COURT: And in response, Mr. Eisner and his
11 team would possibly move for alternative service but that's
12 not what we're here. And Mr. Eisner, when you're doing your
13 motions to amend, if you have the proper names, please put
14 them in.

15 MR. ELSBERG: Yes, Your Honor.

16 THE COURT: All right. So now then, we've dealt
17 with the complaint and we've dealt with service. Have we --
18 and we've sort of dealt with timeframes.

19 MR. ELSBERG: Your Honor, yes. We have -- I don't
20 think we've yet dealt with a timeframe for discovery on
21 service.

22 THE COURT: Okay, I'm going to --

23 MR. LEVIN: Your Honor --

24 THE COURT: Let me just be clear. Mr. Kessler,
25 let me just come back to you for a moment. To make the

1 record clear, I'm going to deny any of the 12(b)(5) motions
2 without prejudice so then it comes in on every single case.
3 That makes everything clean, if they're currently pending,
4 okay?

5 MR. KESSLER: Understood, Your Honor.

6 THE COURT: And one brief per defendant on that.
7 Okay, somebody else -- no grouping. Somebody --

8 MR. LEVIN: Yes, Your Honor, Richard Levin.

9 THE COURT: Yes, sir, Mr. Levin.

10 MR. LEVIN: You said we dealt -- you said we dealt
11 with timing. June 3rd for 12(b)(5) motions. What about
12 opposition and reply?

13 THE COURT: I haven't gotten there. I've only
14 gotten -- that's why I said, we're dealing with timeframe
15 because we -- I want to coordinate everything. We've got
16 the amended complaint timeframe, correct?

17 MR. ELSBERG: Yes, Your Honor.

18 THE COURT: So then on the service timeframe, when
19 you file your 12(b)(5) motion, you file your brief with that
20 so it comes in, not just a motion, but you filed your legal
21 brief on what your grounds are and then we will -- okay, so
22 that's June 3rd. So Mr. Eisner, when reply?

23 MR. ELSBERG: For replay, maybe what we could do
24 is -- or for our opposition.

25 THE COURT: Opposition, right.

1 MR. ELSBERG: Yes. We would want to build
2 discovery in there, so Your Honor, do you think it would
3 work if we had, say, 45 days of discovery and then a couple
4 of weeks after that for us to put our briefs in?

5 THE COURT: Sounds good.

6 MR. ELSBERG: So that --

7 THE COURT: Sounds good. So what day does that
8 put us out for? What hearing day? Back it up so that
9 you're a week ahead of a hearing day.

10 MR. ELSBERG: Okay, we'll do that. So I'm just
11 figuring it out. So June 3rd puts us out to, if it's 60
12 days, I'm going to say May 21, July 21 --

13 THE COURT: August the 18th? Is that a good day?

14 MR. ELSBERG: Yes, that's a good day.

15 THE COURT: Okay, August the 18th.

16 MR. ELSBERG: And --

17 THE COURT: So you've got to back up from that.
18 You've got to back up at least a week from that so that we
19 have time to absorb it.

20 MR. ELSBERG: Yes, Your Honor.

21 THE COURT: I mean, nothing at the last minutes
22 for us. We've still got a whole other caseload going on.

23 MR. ELSBERG: Yes, understood. And for discovery,
24 I would ask that we -- I would ask that we be able to, I
25 guess, start discovery now on the -- only on service -- on

1 the defendants who raised their hands --

2 THE COURT: Okay.

3 MR. ELSBERG: -- today.

4 THE COURT: Sounds good.

5 MR. ELSBERG: And by the way, I'm just looking at
6 the calendar now. Forty-five days takes us to July 19th.

7 THE COURT: So then let's go out to September on
8 this.

9 MR. ELSBERG: And then 21 days from July 19th to
10 file our opposition is August 9.

11 THE COURT: So let's -- September 15th. September
12 -- excuse me, September 15th is when we'll hear it.

13 MR. ELSBERG: Okay, Your Honor. And then my next
14 question is, when we can begin discovery. What I would
15 request, what I think might be reasonable, would be if we
16 can start -- if we can start immediately on discovery for
17 those who have raised their hands and said --

18 THE COURT: Well, some of them -- okay, I don't
19 disagree with that.

20 MR. ELSBERG: Yes.

21 THE COURT: But many of them are working on the
22 stipulation.

23 MR. ELSBERG: Yes.

24 THE COURT: So they're going to either file it by
25 June 1st, so --

1 MR. ELSBERG: Yes.

2 THE COURT: Give them some time to work on the
3 stipulation and then if it's not done June 1st. Why don't
4 you start discovery June 1st so that -- well, that -- so
5 they either file the stipulation or they file their brief so
6 you know what you're dealing with, too.

7 MR. ELSBERG: Yes. Yes.

8 THE COURT: I mean, you might be go chasing down
9 the wrong rabbit hole.

10 MR. ELSBERG: I agree. Yes. No, Your Honor, I
11 was actually going to propose the same thing, that they --
12 that there's a deadline for the stipulation. I was hoping
13 that the deadline for the stip could be sooner. This issue
14 has been kicking around for months now. We've been trying
15 to do a stipulation and so I was hoping that the deadline
16 for the stipulation could be within a week or two.

17 THE COURT: Sooner than that?

18 MR. ELSBERG: Yeah, so then we really would know
19 sooner.

20 THE COURT: Okay, what's 30 days -- 30 days from
21 today is May 21st?

22 MR. ELSBERG: Yes.

23 THE COURT: Give or take.

24 MR. ELSBERG: Yeah, give or take.

25 THE COURT: Okay, so then they need to file their

1 -- I need an order on this. I need a stipulation that they
2 file their briefs on every one that has either not consented
3 or is objecting to file their briefs by May the 21st. Now,
4 does that still make it good for September the 15th? Does
5 that work better or, I mean, does that still make the timing
6 good on that?

7 MR. ELSBERG: Yes. In fact, we could do it by the
8 August date.

9 THE COURT: I prefer that, because again, the two
10 issues that I have right now for me, clean complaint and the
11 service, so that we can just get to the meat of what we're
12 talking about.

13 MR. ELSBERG: Okay. So Your Honor, if I could, I
14 could propose some dates that would get this ready for the -
15 - for it to be --

16 THE COURT: August --

17 MR. ELSBERG: For the August conference, yes.

18 THE COURT: August 18th. August --

19 MR. ELSBERG: Yes.

20 THE COURT: Okay, please do.

21 MR. ELSBERG: Okay.

22 THE COURT: So I'm ruling on it now but not
23 proposed. I'm ruling that it will be back and it's not for
24 everybody else to decide. They will either sign on to the
25 stip or file their motion by May the 21st. Then we have the

1 briefing schedule -- what's the briefing schedule then? And
2 I'm ordering it right now.

3 MR. ELSBERG: Yeah, so our opposition would be on
4 July 26th, 45 days for discovery --

5 THE COURT: Well, 45 discovery on your briefing
6 schedule, not after that.

7 MR. ELSBERG: Correct. No, no, no, correct.

8 THE COURT: Okay.

9 MR. ELSBERG: Correct. So opposition due on July
10 26.

11 THE COURT: Perfect. That's perfect for then the
12 August 18th day. Perfect.

13 MR. BOCCUZZI: -- reply, Your Honor?

14 THE COURT: No. No replies. I don't allow Sur-
15 Replies. Put it all in your original brief.

16 MR. ELSBERG: Your Honor, may I bring up one other
17 issue?

18 THE COURT: Yes, Mr. Eisner -- Eisenberg.

19 MR. ELSBERG: Yeah, sorry. I typed it. It looks
20 like an I. It's --

21 THE COURT: Oh.

22 MR. ELSBERG: I apologize. It's David Elsberg.

23 THE COURT: I know, I keep looking at that
24 thinking that's not what I think it is. Okay, go ahead.

25 MR. ELSBERG: It's hard to read on the screen. So

1 Your Honor, earlier when we were talking about the motion to
2 amend and I asked if we could have a reply, I think that
3 maybe there was a lack of clarity on the sequence of the
4 briefing.

5 THE COURT: Okay.

6 MR. ELSBERG: -- be wrong, but we would be filing
7 the opening brief. They would -- the defendants would be
8 filing an opposition, and what I was asking for was 14 days
9 for a reply which I did not think was a Sur-Reply.

10 THE COURT: Okay. That's just a reply and same
11 thing with Mr. Levin. Mr. Levin, within -- seven days.
12 I'll give you seven days on the replies.

13 MR. ELSBERG: Thank you, Your Honor.

14 THE COURT: And Mr. Levin, I stand corrected.
15 Thank you.

16 MR. LEVIN: Yes. Thank you, Your Honor.

17 THE COURT: All right. Where are we now? Where
18 are we now?

19 MR. ELSBERG: I think we're in a good spot for
20 now, Your Honor. Since Your Honor said you do not want to -
21 - I almost hesitate to even mention the word motion to
22 dismiss right now. we're not dealing with that.

23 THE COURT: We're not doing motion to dismiss --

24 MR. ELSBERG: Yes.

25 THE COURT: -- until we have a complaint.

1 MR. ELSBERG: Yes.

2 THE COURT: Until we have an official complaint.

3 MR. ELSBERG: Yes. And so we have the motion to
4 amend scheduled and so we will then have complaints, so the
5 complaints will be squared away. We have a schedule for
6 briefing on the service issue and we have a schedule for
7 discovery on the -- for discovery on the --

8 THE COURT: Service issue.

9 MR. ELSBERG: On the service issue and the
10 discover will not begin until after we know who has
11 stipulated and who has not.

12 THE COURT: Mr. Kessler, the ball is in your park
13 -- yeah, on your park in that one, so --

14 MR. ELSBERG: And Your Honor, just to give an idea
15 of what I'm contemplating for discovery to maybe avoid
16 disputes later, I would think that it would be very narrow,
17 very quick, and that it would be -- we would ask for
18 documents, only on service, and in some instances we might
19 ask for a 30(b)(6) on only the topic -- 30(b)(6) deposition
20 on only the topic of service. That's what I would
21 contemplate.

22 THE COURT: Exactly. Okay. I agree with you. I
23 think that as far as I'm concerned, that's pretty quick and
24 pretty clean and remember, this is service. It does not
25 take me having knowledge of what's gone on in this case

1 before. This is just -- this is, I think, what we all
2 basically learned in law school 101 --

3 MR. ELSBERG: Yes, Your Honor.

4 THE COURT: Or in civil procedure 101. Okay,
5 cool. Guys, I feel good about today.

6 MR. ELSBERG: I do, too, Your Honor.

7 THE COURT: I'm seeing you again in May.

8 MR. ELSBERG: Yes, Your Honor.

9 THE COURT: Okay.

10 MR. ELSBERG: And we appreciate that you are --
11 that you're moving this forward. Very grateful for that.

12 THE COURT: This -- by the way, I did have a fan
13 on the phone. She left.

14 MR. ELSBERG: I agree. I agree with her. I agree
15 with her.

16 THE COURT: As I blush (indiscernible) red.

17 MR. ELSBERG: Amen to what she said,
18 (indiscernible), yes.

19 THE COURT: You ruled against me and I disagree
20 with you, but I think you're great. I'm going to put that
21 on my tombstone.

22 MR. ELSBERG: Yes. Yes.

23 THE COURT: Everybody -- anybody else wish to be
24 heard on any other matter? It's good seeing y'all. And
25 everyone that's just on the phone, think about Zoom. I

1 really do like seeing y'all. It makes a difference to me.
2 I put a face to a name and then when I see you again I may
3 not remember your name, but I'll remember that I had you and
4 you were here, so thank you.

5 MR. LEVIN: Your Honor, some of us were not
6 sartorially prepared for the hearing.

7 THE COURT: Listen, truly, you should see me. I'm
8 flying blind because everything is off except this, so I'm
9 like, okay. Thanks everyone.

10 MR. ELSBERG: Thank you, Your Honor.

11 THE COURT: Please stay safe. Stay well.

12 MR. BAMBERGER: Thank you, Judge.

13 MR. ELSBERG: Likewise, Your Honor.

14 WOMAN 1: Thank you.

15 THE COURT: Wash your hands. Wear your mask. And
16 have a great day. Take care.

17 MR. ELSBERG: You too, Your Honor. Bye.

18 THE COURT: Bye bye.

19 (Whereupon these proceedings were concluded at
20 11:37 AM)

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12 (b) (5) motions denied without prejudice	74	1

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

Veritext Legal Solutions

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Date: April 22, 2021

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